

JS 44 (Rev. 09/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Daniela Lopez, an infant by her G.A.L. Berenice Vasquez, and Berenice Vasquez and Arturo Lopez, Individually.

(b) County of Residence of First Listed Plaintiff Bergen County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Michael B. Zerres, Esq. 973-635-5400
Blume Forte Fried Zerres & Molinari, One Main Street, Chatham, NJ

DEFENDANTS

United States of America

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☒ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input checked="" type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

post Birth related medical malpractice - hip dysplasia

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

3/24/20

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

BLUME FORTE FRIED

ZERRES & MOLINARI, P.C.

Michael B. Zerres, Esq. - NJ Bar ID# 010351988

One Main Street

Chatham, New Jersey 07928-0924

(973) 635-5400

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DANIELA LOPEZ, an infant by her Guardian Ad Litem, BERENICE VAZQUEZ, and BERENICE VAZQUEZ and ARTURO LOPEZ, Individually,

Plaintiffs,

vs.

UNITED STATES OF AMERICA, JOHN DOES, M.D. 1-5, and JANE DOES, R.N. 1-5 (a class of fictitiously named defendants), and DOE PHYSICIAN GROUP, P.C. 1-5 (a fictitious designation representing the class of as yet unknown corporate entities affiliated or connected in any manner with the individual defendants in this matter or with plaintiff's care and vicariously, directly or administratively responsible for the other medical providers actions or failures or plaintiff's injury)

Defendants.

CIVIL ACTION NO.:

Civil Action

**COMPLAINT, JURY DEMAND,
DESIGNATION OF TRIAL
COUNSEL, AND CERTIFICATION**

Plaintiffs, DANIELA LOPEZ, an infant by her Guardian Ad Litem, BERENICE VAZQUEZ, and BERENICE VAZQUEZ and ARTURO LOPEZ, Individually, residing at 6809 Kennedy Blvd., North Bergen, NJ, by way of Complaint say:

JURISDICTION AND VENUE

1. The plaintiff, DANIELA LOPEZ, an infant by her Guardian Ad Litem, BERENICE VAZQUEZ, and BERENICE VAZQUEZ and ARTURO LOPEZ, Individually
2. Upon information and belief, JEANNETTE SUJOVOLSKY, D.O., and CHERYL PANEM, M.D, licensed physicians in the State of New Jersey, and, at all relevant times were employees of NORTH HUDSON COMMUNITY ACTION CORPORATION.

3. Upon information and belief, pursuant to the Federally Supported Health Centers Assistance Act, 42 U.S.C. §§ 233(g)-(n), NORTH HUDSON COMMUNITY ACTION CORPORATION and its employees have been deemed to be federal employees and JEANNETTE SUJOVOLSKY, D.O., and CHERYL PANEM, M.D, were acting within the scope of their federal employment at the time of the events alleged herein. As such, the UNITED STATES OF AMERICA is a proper defendant in this case, as a result of being the employer of these health care providers.

4. Upon information and belief, the defendant, NORTH HUDSON COMMUNITY ACTION CORPORATION, is a corporation incorporated under the laws of the State of New Jersey with its principal place of business located in Union City, New Jersey.

5. Upon information and belief, the defendants, JOHN DOES, 1-5 (a class of fictitiously named doctors), JANE DOES 1-5 (a class of fictitiously named nurses), DOE PHYSICIAN GROUP, P.C. 1-5 (fictitious designations representing the class of as yet unknown entities affiliated or connected in any manner with the individual defendants in this matter or with plaintiffs' care and vacariously, administratively, or directly responsible for the other medical providers' actions and for plaintiffs' injuries) are citizens of the State of New Jersey or are corporations incorporated under the laws of the State of New Jersey having a principal place of business in the State of New Jersey.

6. This Court has exclusive subject matter jurisdiction over civil actions on claims against the defendant, UNITED STATES OF AMERICA, for, inter alia, money damages for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his/her office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omissions occurred pursuant to 28 U.S.C. § 1346(b)(1).

7. Venue is proper in the United States District Court of New Jersey pursuant to 28 U.S.C. § 1391, insofar as the individual defendants were citizens of this District at the time of the occurrence and are subject to personal jurisdiction.

8. Plaintiffs first filed a Notice of Federal Tort Claim on or about May 11, 2018, and, a request for reconsideration of denial of their claim on May 21, 2019. The request for reconsideration was denied on October 30, 2019 (Exhibit A).

FIRST COUNT

1. Plaintiffs, BERENICE VAZQUEZ and ARTURO LOPEZ, are the parents of the infant, DANIELA LOPEZ, have no interests in this action contrary to those of said infant plaintiff and have consented to act as her guardian ad litem.

2. On or about May 27, 2016, plaintiff, DANIELA LOPEZ, by her Guardian ad Litem, BERENICE VAZQUEZ, did employ NORTH HUDSON COMMUNITY ACTION CORPORATION, and was treated by JEANNETTE SUJOVOLSKY, D.O., and CHERYL PANEM, M.D, employees of defendant UNITED STATES OF AMERICA, and defendants JOHN DOES 1-5 (a class of fictitiously named doctors), JANE DOES 1-5 (a class of fictitiously named nurses), DOE PHYSICIAN GROUP, P.C. 1-5 (fictitious designations representing the class of as yet unknown business entities affiliated or connected in any manner with the individual defendants in this matter or with plaintiff's care and vicariously, administratively, or directly responsible for the other medical providers actions and for plaintiffs' injuries), their agents, servants and/or employees, as her physicians to render certain medical care, treatment and services to her.

3. All the defendants above were or appeared to be agents, servants and employees of defendant, UNITED STATES OF AMERICA, making it vicariously liable for their negligence.

4. JEANNETTE SUJOVOLSKY, D.O., CHERYL PANEM, M.D., JOHN DOES 1-5 (a class of fictitiously named doctors), JANE DOES 1-5 (a class of fictitiously named nurses), DOE PHYSICIAN GROUP, P.C. 1-5 (fictitious designations representing the class of as yet unknown business entities affiliated or connected in any manner with the individual defendants in this matter or with plaintiff's care and vicariously, administratively, or directly responsible for the other medical providers actions and for plaintiffs' injuries), were doctors, nurses or other health care personnel employed by defendant, UNITED STATES OF AMERICA (NORTH HUDSON COMMUNITY ACTION CORPORATION).

5. Said defendants, their agents, servants and/or employees were negligent and careless in the medical treatment that was rendered to plaintiff on, prior and subsequent to May 27, 2016, did deviate from accepted standards in rendering said medical care as a result of which plaintiff sustained serious, painful and permanent injuries, was caused to endure great pain and suffering, was caused to become disabled, will in the future lose large sums of money for wages, was obliged to expend large sums of money for medical care and attention, will in the future be obliged to expend large sums of money for medical care and attention, and, has sustained a loss of enjoyment of life.

WHEREFORE, plaintiff, DANIELA LOPEZ, an infant by her Guardian ad Litem, BERENICE VAZQUEZ, demands judgement against the defendants, together with interest and costs of suit.

SECOND COUNT

1. Plaintiffs repeat each and every allegation of the prior count as though set forth herein at length.

2. Plaintiffs, BERENICE VAZQUEZ and ARTURO LOPEZ, are the parents of plaintiff DANIELA LOPEZ, and as such are entitled to her services.

3. Plaintiffs, BERENICE VAZQUEZ and ARTURO LOPEZ, as the parents of DANIELA LOPEZ were caused to suffer severe mental and emotional distress and anguish as the result of their daughter's injuries and have lost and will lose her services to which they otherwise would have been entitled.

4. As a result of the actions of the defendants aforesaid, plaintiffs did sustain and will continue to sustain indefinitely in the future severe mental and emotional distress and anguish.

WHEREFORE plaintiffs hereby demand damages against the defendants together with costs.

THIRD COUNT

1. Plaintiffs repeat each and every allegation of the prior counts as though set forth herein at length.

2. Plaintiffs, BERENICE VAZQUEZ and ARTURO LOPEZ,, are the parents of plaintiff DANIELA LOPEZ, and as such are responsible for her debts.

3. Plaintiffs, BERENICE VAZQUEZ and ARTURO LOPEZ, as the parents of DANIELA LOPEZ, have been and will be caused to incur medical and related expenses.

4. As a result of the actions of the defendants aforesaid, plaintiffs did incur and will continue to incur in the future medical and related expenses, and, further, have and will experience a loss of their daughter's services.

5. In addition, plaintiffs BERENICE VAZQUEZ and ARTURO LOPEZ have provided therapeutic services to their daughter to help treat her injury and will continue to do so in the future, and, as such they are entitled to compensation for the reasonable value of therapeutic services provided.

WHEREFORE, plaintiffs hereby demand damages against the defendants together with costs.

FOURTH COUNT

1. Plaintiffs repeat each and every allegation of the prior Counts as though set forth herein at length.

2. The defendants failed to disclose and/or advise the plaintiffs of all the risks, benefits, treatment, options, alternatives and necessary information that a reasonably prudent person would want to have under the circumstances then existing to consider, weigh and choose knowledgeably the options available, and thus failed to give the plaintiffs the information required to make informed choices concerning medical care.

3. As a result of those failures, defendants were negligent and careless in the treatment that was rendered to plaintiff, DANIELA LOPEZ and did deviate from accepted standards in rendering said care, as a result of which plaintiff DANIELA LOPEZ sustained serious, painful and permanent injuries, was caused to endure great pain and suffering, will in the future lose large sums of money for wages, and will in the future be obliged to expend large sums of money for medical care and attention.

WHEREFORE plaintiffs demand judgment for damages against the defendants together with costs.

FIFTH COUNT

1. Plaintiffs repeat each and every allegation of the prior Counts as though set forth herein at length.

2. Defendant, THE UNITED STATES OF AMERICA (NORTH HUDSON COMMUNITY ACTION CORPORATION) DOE PHYSICIAN GROUP, PA or DOE PHYSICIAN GROUP, PC 1-5 or DOE MANAGED CARE COMPANY is the name of the group, entity, practice and/or corporation which either employed or is otherwise vicariously liable for the negligence of defendants JOHN DOES 1-5 (a class of fictitiously named doctors), JANE DOES 1-5 (a class of fictitiously named nurses), DOE PHYSICIAN GROUP, PC 1-5, (fictitious designations representing the class of as yet unknown business entities affiliated or connected in any manner with the individual defendants in this matter or with plaintiff's care and vicariously, administratively, or directly responsible for the other medical providers actions and for plaintiffs' injuries) who are those persons and/or entities affiliated with defendant hospital and/or UNITED STATES OF AMERICA that had a duty to adopt, implement, oversee, review and have in effect appropriate and necessary policies, procedures and safeguards so as to ensure that appropriate care, treatment, instructions, discharge, consultations, advice, and follow-up care were provided to plaintiffs.

3. Said defendants negligently and recklessly breached those obligations described above, as result of which plaintiffs suffered the injuries, damages and losses described herein.

WHEREFORE plaintiffs hereby demand damages against all defendants together with costs.

SIXTH COUNT

1. Plaintiffs repeat each and every allegation of the prior counts as if set forth herein at length.

2. The defendants, JOHN DOES, M.D., 1-5 and JANE DOES, R.N., 1-5 (a class of fictitiously named defendants) and DOE PHYSICIAN GROUP, PA or DOE PHYSICIAN GROUP, PC or DOE MANAGED CARE (a fictitious designation representing the class of as yet unknown corporate entities affiliated or connected in any manner with the individual defendants in this matter or with plaintiff's care and vicariously, directly or administratively responsible for the other medical providers' actions or failures or plaintiff's injury) were also involved in the treatment of plaintiffs, and also deviated from accepted standards of practice and were negligent so as to cause the same injuries, losses and damages to the plaintiffs as is set forth herein.

WHEREFORE, plaintiffs hereby demand damages against the defendants, together with interest and costs of suit.

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all issues.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury as to all issues involved herein.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R.4:25-4, MICHAEL B. ZERRES, has been designated as trial counsel in the above matter.

CERTIFICATION

I hereby certify that this matter is not the subject of any other action pending in any Court or a pending Arbitration proceeding, nor is any other action or Arbitration proceeding contemplated. All parties known to plaintiff at this time who should have been joined in this action, have been joined.

BLUME, FORTE, FRIED,
ZERRES & MOLINARI
Attorneys for Plaintiffs

By 

MICHAEL B. ZERRES

DATED: March 23, 2020

EXHIBIT A

9/18

DEPARTMENT OF HEALTH & HUMAN SERVICES



Office of The General Counsel
General Law Division
Claims and Employment Law Branch
330 C Street, SW
Switzer Building, Suite 2100
Washington, DC 20201

OCT 30 2019

CERTIFIED-RETURN
RECEIPT REQUESTED

Michael B. Zerres, Esq.
Blume Forte Fried Zerres & Molinari
One Main Street
Chatham, NJ 07928

NOV - 1 2019

Re: Administrative Tort Claim of Berenice Vazquez, Individually and as Guardian Ad Litem for Daniela Paola Lopez (Minor)
Claim No. 2018-0450

Dear Mr. Zerres:

On May 18, 2018, your client, Berenice Vazquez, filed an administrative tort claim, individually and as Guardian ad Litem for Daniela Paola Lopez, a minor, under the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2401(b), 2671-80, alleging, *inter alia*, that, on May 27, 2016, Jeannette Sujovolsky, D.O., and Cheryl Panem, M.D., employees of North Hudson Community Action Corporation, located in Union City, New Jersey, failed to diagnose and treat Daniela Paola Lopez's hip dysplasia. By letter dated April 15, 2019, your client's administrative tort claim was denied, and she was notified of the right to request reconsideration within six months from the date of mailing of the denial letter. On May 22, 2019, this agency received your request for reconsideration. The agency now responds to your client's request for reconsideration with regard to her administrative tort claim.

The Federal Tort Claims Act authorizes the settlement of any claim of money damages against the United States for, *inter alia*, injury caused by the negligent or wrongful act or omission of any employee of the Federal government while acting within the scope of employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. This letter constitutes the notice of final determination on this claim, as required by 28 U.S.C. § 2401(b) (2011).

Your client's claim was initially denied because the evidence failed to establish that your alleged injuries were due to the negligent or wrongful act or omission of a federal employee acting within the scope of employment. We have again reviewed your client's administrative tort claim, and determined that the initial decision denying your client's administrative tort claim was

Michael B. Zerres, Esq.

Administrative Tort Claim of Berenice Vazquez, Individually and as Guardian Ad Litem for Daniela Paola Lopez (Minor)

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correct. Accordingly, the administrative tort claim of Berenice Vazquez, individually and as Guardian ad Litem for Daniela Paola Lopez, a minor, is denied. If you are dissatisfied with this determination, you are entitled to file suit against the United States in the appropriate federal district court within six (6) months from the date of mailing of this determination (28 U.S.C. § 2401(b)).

Sincerely,



Jennifer B. Smith

Acting Deputy Associate General Counsel
Claims and Employment Law Branch